Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In the

Supreme Court of the United States

October Term, 1979

No. 79-918

In the Matter of
HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Debtors.

ROSE SHUFFMAN, As Executrix of
the Estate of OSCAR SHUFFMAN, Deceased,
Petitioner,

—against—

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1979

In the Matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :
Debtors. :

ROSE SHUFFMAN, As Executrix of :
The Estate of OSCAR SHUFFMAN, :
DECEASED, :
Petitioner, :

v. :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC., :
WELLINGTON PRINT WORKS, INC., :
Respondents. :

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The petitioner prays that a writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Second Circuit, entered March 6, 1979.

OPINIONS BELOW

The United States Court of Appeals for the Second Circuit wrote no opinion in denying Petitioner's* Motion to Mandate Jurisdiction Back to the District Court and in granting Respondents' Motion to Dismiss Appeal. The Order denying Petitioner's motion and granting Respondents' motion is reprinted at page A-1 of the Appendix hereto.

JURISDICTION

The order of the United States Court of Appeals for the Second Circuit was entered on March 6, 1979. The en banc order of the United States Court of Appeals for the Second Circuit denying the suggestion for en banc rehearing of the March 6, 1979 order was entered on September 17, 1979, and is reprinted at page A-3, infra. The order of the United States Court of Appeals denying rehearing of the March 6, 1979 order was entered on September 17, 1979, and is reprinted at page A-5, infra.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

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*As used herein, "Petitioner" refers to both Rose Shuffman, as Executrix of the Estate of Oscar Shuffman, Deceased and the late Oscar Shuffman.

QUESTIONS PRESENTED

1. Whether under Messinger v. Anderson 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Mineral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 and Dictograph Products Company v. Sonatone Corporation, 230 F.2d 131 (2nd Cir., 1956), reh'g denied, 231 F.2d. 867 (1956), it was an "abuse of discretion" and "breach of duty" for the Court of Appeals to dismiss an appeal on motion without conducting a hearing on the merits citing "law of the case" based upon a previous panel's affirmance of a District Court's affirmance of a bankruptcy appeal, especially after the District Court acknowledged reversible error in its order which was affirmed by the first panel?

2. Whether, under Pepper v. Litton, 295 U.S. 308 (1939) and Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944), the United States Court of Appeals for the Second Circuit perpetrated a fraud on the United States Supreme Court by dismissing an appeal on motion without conducting a hearing on the merits citing a previous panel's affirmance as "law of the case" where, in the interim, the District Court acknowledged reversible error in its order which was affirmed by the first panel?

3. Whether, under Article III of the United States Constitution, the United States Supreme Court has a duty to the people of the United States to honestly administer justice?

4. Whether, under Messinger v. Anderson 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152 and United States v. United States Smelting

Refining & Mineral Co., 339 U.S., 186, 70 S. Ct. 537, 94 L.Ed. 750, the United States Supreme Court has a duty to reverse its own order denying the Petition for a Writ of Certiorari in Case No. 79-178 which left stand the United States Court of Appeals for the Second Circuit's original affirmance of the District Court's order affirming a bankruptcy appeal in view of the District Court's intervening repudiation of its original order as clearly erroneous?

5. Whether, under Rule 19 of the Rules of the Supreme Court of the United States, Messinger v. Anderson, 225 U.S. 436, 32 S.Ct. 739, 56 L.Ed. 1152, United States v. United States Smelting, Refining & Mineral Co., 339 U.S. 186, 70 S.Ct. 537, 94 L.Ed. 750 Pepper v. Litton, 295 U.S. 308 (1939), and Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944) the United States Supreme Court has as duty to vacate its orders denying petitions for writs of certiorari in Cases Nos. 77-1812 and 79-178, the latter case being the one which had the effect of leaving stand the Court of Appeals affirmance of the repudiated District Court order, in view of the documentation obtained in response to the motion for leave to file petition for a writ of mandamus and petition for a writ of mandamus in Case No. 79-681, which documentation conclusively shows that the United States Court of Appeals for the Second Circuit perpetrated a fraud on the United States Supreme Court and obstructed justice in the former case by allowing an altered and forged order to stand for Supreme Court review?

6. Whether, under Pepper v. Litton, 295 U.S. 308 (1939), the United States Supreme Court must grant certiorari where a failure to do so will result in a fraud and an injustice contrary to the honest administration of justice?

7. Whether under Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944), the United States Court of Appeals for the Secord Circuit breached its duty to honestly administer justice, as part of a continuing criminal conspiracy to obstruct justice and defraud the Petitioner when it denied Petitioner's motion for a remand to the District Court to correct its obvious errors?

8. Whether the Supreme Court of the United States will join in the conspiracy to obstruct justice and cover up of the fix by refusing to correct the clearly erroneous order in violation of its duty and oath?

STATEMENT OF FACTS

On September 13, 1978, Petitioner moved to rehear and reargue the February 22, 1978 Memorandum and Order of the United States District Court affirming a bankruptcy appeal. The District Court, although having acknowledged error on more than one occasion, denied the motion citing lack of jurisdiction in view of the pending appeal in the Court of Appeals, which the District Court stated had ample power to correct any errors.

On December 6, 1978 the United States Court of Appeals for the Second Circuit affirmed the order of the United States District Court for the Southern District of New York (Brieant, J.) which in turn affirmed an order and amended order of the Bankruptcy Court. On March 5, 1979, the Circuit Court denied a Petition for Rehearing En Banc.

After the Per Curiam Opinion was handed down on December 6, 1978, and prior to the filing of the Petition for Rehearing, Petitioner moved in the District Court to vacate its Memorandum and Order which was affirmed by the Per Curiam Opinion. Petitioner based her motion on the District Court's prior acknowledgment that it had no idea that it approved the post-Confirmation commission payments constituting the Bankruptcy Court's amended findings which the Court had said it could not and would not do. The pertinent part of the December 21, 1978 transcript reads as follows:

> MR. SHUFFMAN: Your Honor, under Smith v. Pollen adopted in this circuit by Ryan v. United States

> Lines, this court does have the duty to move in the Court of Appeals for a remand now that it knows its own affirmance was in error.
>
> THE COURT: I don't know that. They tell me that it's not in error. I don't know that there is any action by this court that is in error.
>
> MR. SHUFFMAN: Your Honor stated that you did not take jurisdiction for a period of post-confirmation, yet you ordered the appellant paid monies post-confirmation.
>
> THE COURT: That is what the bankruptcy judge ordered.

The Court of Appeals, however, in its Per Curiam Opinion, affirmed the District Court's clearly erroneous Memorandum and Order, and also repeated that it lacked jurisdiction to approve and would not approve any post-Confirmation commission payments. The pertinent part of the Opinion reads as follows:

> Equally unfounded is appellant's contention that the bankruptcy judge erred in denying priority status to her claim for commissions as an administration expense. The record establishes that appellant has received payment in full on all deliveries made by Rudd to Hartford during the period of arrangement. If appellant believes that she has

not received commissions due her on deliveries made thereafter, her remedy lies not in the bankruptcy court nor on this appeal, but in a plenary action at law. See In re Grodon, 44 F.Supp. 581 (S.D.N.Y. 1942); 9 Collier on Bankruptcy ¶¶8.11, 8.12 (14th ed. 1975).

The Bankruptcy Court's amended findings made without an evidentiary hearing were allegedly based upon debtors' books and records which showed Petitioner as being indebted to the debtors on September 5, 1974, the date of confirmation and discharge. The additional monies "volunteered" by the debtors to cover commissions earned from September 5, 1974 until the end of the calendar year were, however, paid as "administration expenses."

Since the Court of Appeals had not corrected the District Court's error, but had repeated it, Petitioner sought to have the lower Court advise the higher Court of its error at the December 21, 1978 hearing. The District Court again refused, citing lack of jurisdiction.

On March 5, 1979, the Court of Appeals denied the Petition for Rehearing. The next day, another panel granted Respondents' motion to dismiss the appeal, citing the Court's denial of the Petition for Rehearing. The Court also denied Petitioner's motion for a remand to allow the District Court to correct the errors which the Court of Appeals had affirmed.

On October 1, 1979 this Court refused to review the Per Curiam Opinion of the Court of Appeals, and on November 26, 1979, also denied the Petition for Rehearing. The Supreme Court thereby left standing an Opinion which was clearly erroneous, and in effect said one and one is three, when the documentary evidence shows one and one is two.

Also on October 26, 1979, Petitioner filed a Motion for Leave to File a Petition for a Writ of Mandamus and Petition for a Writ of Mandamus, seeking, inter alia, to obtain a transcription of a tape recording of the oral argument on Petitioner's very first motion to remand filed in the Court of Appeals. Petitioner believed that a "CORRECTED" Order of the Court of Appeals, received approximately one week after the original Order, was an altered, back-dated forgery. The Supreme Court refused to review the "CORRECTED" Order, which the District Judge called incomprehensible, in Case No. 77-1812.

Petitioner also charged in her mandamus petition that the Judges of the United States Court of Appeals for the Second Circuit were engaged in an ongoing conspiracy to obstruct justice as part of a cover up of a fix in the Bankruptcy Court, which was also being aided and abetted by several District Court Judges and the United States Attorney. The charges of osbruction of justice and cover up of the fix were first brought to the Supreme Court's attention in Case No. 77-1812.

On November 8, 1979, while the Petition for a Writ of Mandamus was pending in the Supreme Court, Petitioner was provided with a semi-complete transcript of the May 9, 1978 oral argument, when her motion to

obtain the transcript, which had been pending for over a year was finally granted.

The transcript provided by the Court of Appeals clearly shows that the "CORRECTED" Order was an altered, forged document. Since the Court of Appeals was made aware of the issuance of the "CORRECTED" Order on dozens of occasions, and did not advise the Supreme Court of its bogus nature, the lower Court knowingly allowed a false document to stand for Supreme Court review.

On or about November 30, 1979, the Solicitor General of the United States filed a Memorandum for the Federal Respondents in Opposition to the Motion for Leave to File a Petition for a Writ of Mandamus, etc.* containing a semi-complete copy of the May 9, 1978 transcript as an exhibit. Despite the knowledge that a false document was allowed to stand for Supreme Court review, the Solicitor General failed to join in Petitioner's request that the Supreme Court sua sponte vacate its order in Case No. 77-1812, and consider the petition for a writ of certiorari filed therein based upon the legitimate order.

Additional facts detailing the cover up of the fix by the Court of Appeals are presented in Case No. 78-681, and will not be repeated here. Since the facts are supported by documentary evidence, they are irrefutable. The facts clearly show that Petitioner has been defrauded, and that the Supreme Court has been "burglarized".

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*This Petition, Case Docket No. 79-681, is still pending in the Supreme Court.

SUMMARY OF THE ARGUMENT

In Reading Company v. Brown, 88 S.Ct. 1759 (1968), this Court indicated that certiorari will be granted where there is presented an important issue of first impression dealing with the administration of the bankruptcy laws. The case at bar, it is respectfully submitted, falls squarely within this criteria because it deals with:

> (1) the duty of a United States Judge including a Supreme Court Justice, under Article III of the Constitution to correct an erroneous decision even after it has been affirmed or left standing by the denial of a previous petition for a writ of certiorari, in order to prevent a fraud and an injustice;
>
> (2) whether the failure to perform that duty is an "abuse of discretion" and contrary to the honest administration of justice; and
>
> (3) the duty of this Court under Rule 19 of the Rules of the Supreme Court to supervise the workings of the lower federal courts which have deliberately engaged in conduct which obstructs the honest administration of justice in order to prevent a just determination of the cause.

As a result, we respectfully submit, the case at bar justly warrants the granting of this petition, which will undoubtedly clear up ambiguities in the administration of the bankruptcy laws and all laws.

ARGUMENT

Very simply, the District Court Judge whose order was affirmed by the Per Curiam Opinion which this Court refused to review in Case No. 79-178 acknowledged reversible error prior to the filing in this Court.

The Judges of the United States Court of Appeals, who were made aware of the error on a subsequent appeal, refused to exercise their discretion to correct the errors in the first panel's Per Curiam Opinion, and instead chose to dismiss the subsequent appeal on motion without conducting a hearing on the merits, citing the Per Curiam Opinion as "law of the case."

In refusing to review and correct the "clearly erroneous" Opinion of the first panel, the Judges of the second Court of Appeals panel violated their oaths to honestly administer justice, and contributed to a judicially sanctioned fraud.

The Supreme Court of the United States is too important an institution in our system of government to allow its integrity to be emasculated by knowingly and wilfully allowing a litigant to be defrauded as part of a criminal conspiracy to obstruct justice involving members of the Federal Judiciary.

Recently obtained documents released in response to a Motion For Leave to File a Petition for a Writ of Mandamus and Petition for a Writ of Mandamus in related Case No. 79-681 conclusively show that the Judges of the United States Court of Appeals for the Second Circuit perpetrated a fraud on the

United States Supreme Court and the Petitioner herein by allowing a false, forged Order to stand for Supreme Court review in Case No. 77-1812.

Moreover, documents obtained over a year ago conclusively establish that two of the three Judges who participated in the Per Curiam Opinion reviewed by this Court in Case No. 79-178, also participated in a sham, phony "Charade" hearing on a motion which had already been denied. The motion sought the appointment of a special prosecutor to investigate the conspiracy to obstruct justice and cover up of a fix in the Bankruptcy Court, which included allowing the forged order to stand for Supreme Court review.

In addition to the District Court's acknowledgment of error, this Court had before it on the Petition for a Writ of Certiorari in Case No. 79-178 documentary evidence in the form of the Appendix which conclusively showed the Per Curiam Opinion to be clearly erroneous. Unfortunately, the High Court chose to ignore the truth or was misled into denying it.

The bottom line then becomes that either the Justices of this Court were negligent, incompetent or downright dishonest in their treatment of the original Petition for a Writ of Certiorari in Case No. 79-178 which sought a review of the Per Curiam Opinion on the merits. None of the three explanations above are viable for a government of laws, not men.

The fundamental question confronting the Supreme Court, not just in the instant Petition, but going to the core of its legitimacy, is whether or not the Supreme Court of the United States will honestly adjudicate the cases and controversies which ultimately come before it.

This Petition brings the question squarely to the fore. The Supreme Court recently refused to review the original Per Curiam Opinion, despite the knowledge that the decisions of the Courts below were clearly erroneous. Article III of the Constitution dictates a different result.

Given the current of the present world climate a Republic founded upon the law must not flounder for the sake of protecting a few dishonest men who view themselves as above the law. One cannot judge the acts of others unless one's own mistakes are corrected, not covered up.

The Supreme Court now has before it in the form of this Petition the perfect example for demonstrating and exhibiting the supremacy of law over the human fallibility of men. By granting this Petition and then remanding the cause to the lower courts for the correction of their acknowledged errors, the Supreme Court will demonstrate the ultimate dynamics of the law in action.

To deny the Petition, thereby perpetuating a clearly erroneous result, will bring the men who comprise the Court into disrepute. It will erode the foundation upon which the pillars of a free society rest.

If Mr. Justice Brandeis were alive, he would remind his Brother Justices that:

> "The Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

The Honorable Justices of the Supreme Court have taken a solemn oath to honestly administer justice. Now that the Court is aware of the clearly erroneous result reached below, it must seize this opportunity to correct the resulting fraud and injustice.

The failure to do so will be a signal to every corrupt lawyer and judge in the United States that if you have a problem, and can afford the right connections, don't worry, it will be taken care of.

Such is <u>not</u> the rule of law. It is the rule of corrupt men.

IMPORTANCE OF THIS PETITION

This petition presents a situation where the Court of Appeals for the Second Circuit has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

Further, this petition presents a situation calling for review of a ruling of a lower court which has been repudiated as being clearly in error by the Judge that reached it, which erroneous ruling has been left standing by a previous denial of a petition for a writ of certiorari.

The word honest and Judge should be synonymous. Judges, or Justices of the Supreme Court, should exercise their sound discretion by correcting errors brought to their attention.

The failure to do so would represent a break-down of law, and mold the Justices as dishonest.

CONCLUSION

Petitioner respectfully prays that the petition for a Writ of Certiorari be granted.

Respectfully submitted,

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New York, New York
December 6, 1979

UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 6th day of March, one thousand nine hundred and seventy-nine.

Present:

Hon. William H. Mulligan
Hon. Murray I. Gurfein
Hon. Henry F. Werker*

Circuit Judges

In The Matter of	
HARTFORD TEXTILE CORPRATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., Debtors.	Docket No. 78-5055
ROSE SHUFFMAN, As Executrix of the Estate of OSCAR SHUFFMAN, Appellant,	
-against-	
HARTFORD TEXTILE CORPORATION, OXFORD CHEMICALS, INC., WELLINGTON PRINT WORKS, INC., Appellees.	

*United States District Judge for the Southern District of New York, sitting by designation.

The facts and issues raised in this appeal are indistinguishable from those adjudicated in this court's recent decision in In re Hartford Textile Corp., Docket Nos. 78-5024, 5032, 5036 and 5045 (Dec. 6, 1978). Appellant's petition for rehearing with suggestion for rehearing en banc in 78-5024 has been filed and has been denied. Accordingly, appellant's motion to mandate jurisdiction to the district court is denied. Appellee's motion to dismiss the instant appeal is granted.

/s/ William H. Mulligan

/s/ Murray I. Gurfein

/s/ Henry F. Werker

UNITED STATES COURT OF APPEALS

For The

SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 17th day of September, one thousand nine hundred and seventy-nine.

BEFORE: HON. IRVING R. KAUFMAN, CH.J.
HON. WILFRED FEINBERG, C.J.
HON. WALTER R. MANSFIELD, C.J.
HON. WILLIAM H. MULLIGAN, C.J.
HON. JAMES L. OAKES, C.J.
HON. WILLIAM H. TIMBERS, C.J.
HON. MURRAY I. GURFEIN, C.J.
HON. ELLSWORTH A. VAN GRAAFEILAND, C.J.
HON. THOMAS J. MESKILL, C.J.
HON. JON O. NEWMAN, C.J.
HON. AMALYA L. KEARSE, C.J.
HON. HENRY F. WERKER, D.J.

In the Matter of

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.,
WELLINGTON PRINT WORKS, INC.,

Debtors.

ROSE SHUFFMAN, As Executrix of the Estate of Oscar Shuffman,

Appellant,

-against-

HARTFORD TEXTILE CORPORATION,
OXFORD CHEMICALS, INC.,
WELLINGTON PRINT WORKS, INC.,

Appellees.

A motion for rehearing of the granting of the motion dismissing the appeal herein and the denial of the motion mandating jurisdiction to the district court containing a suggestion that the matter be heard en banc, having been filed herein by counsel for the appellant, and no active judge or judge who was a member of the panel having requested that a poll be taken on said suggestion.

UPON CONSIDERATION thereof, it is

ORDERED that said suggestion be and it thereby is DENIED.

A. DANIEL FUSARO,
Clerk

/s/ Arthur Heller

BY: Arthur Heller,
Deputy Clerk

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 17th day of September, one thousand nine hundred and seventy-nineth.

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In the Matter of :

HARTFORD TEXTILE CORPORATION, :
OXFORD CHEMICALS, INC.
WELLINGTON PRINT WORKS, INC., :

:

Debtor. :

----------x

It is hereby ordered that the motion made herein by counsel for the appellant by notice of motion dated March 8, 1979 for rehearing and reargument of the order dated March 6, 1979 be and it hereby is denied.

WILLIAM H. MULLIGAN /s/ William H. Mulligan

MURRAY I. GURFEIN /s/ Murray I. Gurfein

HENRY F. WERKER /s/ Henry F. Werker

CIRCUIT JUDGES